

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Zev Carter	Team: Squad #3	CCRB Case #: 201901569	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 02/09/2019 12:40 AM	Location of Incident: St. Nicholas Avenue and Dekalb Avenue	Precinct: 83	18 Mo. SOL 8/9/2020	EO SOL 3/26/2021	
Date/Time CV Reported Wed, 02/13/2019 3:20 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Wed, 02/13/2019 3:20 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Carlos Hernandez	29390	954931	083 PCT
2. POM Jeremy Rivera	08064	955383	083 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Carlos Hernandez	Abuse: Police Officer Carlos Hernandez threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g) [REDACTED]	[REDACTED]	[REDACTED]

## Case Summary

On February 20, 2019, § 87(2)(b) filed this complaint at the CCRB as a walk-in.

On February 9, 2019, at approximately 12:40 a.m., § 87(2)(b) was driving his van on Wyckoff Avenue in Brooklyn. After § 87(2)(b) turned right at the intersection of Wyckoff Avenue and DeKalb Avenue, Police Officers Carlos Hernandez and Jeremy Rivera of the 83<sup>rd</sup> Precinct stopped § 87(2)(b)'s vehicle at the intersection of St. Nicholas Avenue and DeKalb Avenue for allegedly disobeying a red light, for which § 87(2)(b) was issued a summons. During the stop, § 87(2)(b) exited his vehicle, and PO Hernandez threatened to arrest him (**Allegation A: Abuse of Authority**, § 87(2)(g), § 87(4-b), § 87(2)(g)).

This case contains video evidence from TARU cameras at the intersection of Wyckoff Avenue and DeKalb Avenue (**01, 02 Board Review**). As of closing, the CCRB has not obtained body-worn camera footage of this incident.

## Findings and Recommendations

### Allegation (A) Abuse of Authority: Police Officer Carlos Hernandez threatened to arrest

§ 87(2)(b)

It is undisputed that PO Hernandez threatened to arrest § 87(2)(b) when § 87(2)(b) exited his car.

§ 87(2)(b) stated that on February 9, 2019, at approximately 12:40 a.m., he was driving his van southeast on Wyckoff Avenue in Brooklyn (**03 Board Review**). § 87(2)(b)'s van is in working order and its front windows are tinted at 35 percent. In the car were § 87(2)(b)'s friend § 87(2)(b) and three female friends who were visiting New York from Tennessee. He denied committing any traffic infractions.

After § 87(2)(b) was pulled over and a summons was written by PO Hernandez, § 87(2)(b) told PO Hernandez that it was unfair for him to issue the summons because he had never disobeyed the red light. § 87(2)(b) asked to take a photograph of the police car. He opened the door a small amount to get out of his vehicle and the officers started to yell at him. § 87(2)(b)'s ID fell out of the car when he opened the door. PO Hernandez told § 87(2)(b) "You're gonna get arrested. Don't get out of your car." § 87(2)(b) told PO Hernandez multiple times that he only wanted to take a photograph of the car. PO Hernandez responded, "Don't, sir, you're gonna get arrested." § 87(2)(b) got back into his vehicle. PO Hernandez and PO Rivera went to their vehicle and drove away.

§ 87(2)(b) came to the CCRB with § 87(2)(b) but declined to be interviewed regarding this incident after learning that § 87(2)(b) brought him to CCRB, and not the Department of Motor Vehicles. § 87(2)(b) did not know his female friends' last names and could not provide their contact information.

PO Hernandez and PO Rivera both stated that § 87(2)(b) disobeyed a steady red light, and that before he had done so, they intended to pull him over for how dark his van's windows were tinted (**04, 05 Board Review**). PO Hernandez and Rivera stated that § 87(2)(b)'s passengers did not interact with § 87(2)(b). Both PO Hernandez and PO Rivera stated that the occupants of the car did not interact with them. Neither PO Hernandez nor PO Rivera witnessed any civilians gather around the car stop.

PO Hernandez stated that § 87(2)(b) was "highly upset" after PO Hernandez issued him a summons. PO Hernandez tried to explain why he was issuing the summons. § 87(2)(b) did not take the summons from PO Hernandez and said, "I'm not taking it." PO Hernandez put the summons into § 87(2)(b)'s window. § 87(2)(b) threw a piece of his documentation into the street, exited his vehicle without announcing his intent to do so, and refused to get back into his vehicle after being ordered to. § 87(2)(b)'s actions did not interfere with any vehicular traffic around the car stop.

PO Hernandez stated that he threatened to arrest § 87(2)(b) for disorderly conduct. He stated that § 87(2)(b) had committed disorderly conduct because he had exited his vehicle against officers' commands, refused to get back into his vehicle, made noise, and approached him in a threatening manner. PO Hernandez thought that § 87(2)(b)'s demeanor was threatening because of "his words" and "his defiance," but did not describe § 87(2)(b)'s behavior beyond this. PO Hernandez stated that it could have disturbed traffic if § 87(2)(b) was subdued in the street, and stated that he worried that § 87(2)(b)'s passengers could also have left the car, causing a further disturbance. PO Hernandez also testified that § 87(2)(b) could have been arrested for the traffic violation that he had committed.

PO Rivera stated that the stretch of DeKalb Avenue near where § 87(2)(b) was a bus and hospital route (DeKalb Hospital was nearby). He stated that § 87(2)(b) could have been arrested for the disorderly conduct subsection which penalizes obstructing vehicle traffic. § 87(2)(b)'s presence in the road did not interfere with any traffic going by the scene of the stop.

The investigation obtained footage from a TARU camera which is pointed towards the north and east corners of the intersection of DeKalb Avenue and Wyckoff Avenue and a stretch of DeKalb Avenue to the northeast (**02 Board Review**). The incident lasts from 14:25 to 31:10 in the recording. Moderate vehicle traffic can be observed on DeKalb Avenue through the duration of the vehicle stop. The video does not capture anything else that is relevant to the investigation.

The threat of arrest for disorderly conduct in this case alleges a violation of NYS Penal Law § 240.20(5), which makes it unlawful for a person, "with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof," to obstruct vehicular or pedestrian traffic (**06 Board Review**).

In People v. Weaver, the court noted that an essential component of disorderly conduct is that an individual's actions cause or have the potential to cause public harm: "In assessing whether an act carries public ramifications, relevant factors to consider are the time and place of the episode under scrutiny; the nature and character of the conduct; the number of other people in the vicinity;

whether they are drawn to the disturbance and, if so, the nature and number of those attracted; and any other relevant circumstances” 16 N.Y.3d 123 (2011) (**07 Board Review**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

#### Civilian and Officer CCRB Histories

- PO Hernandez has been a member of service for six years and has been a subject in four CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g)

(g)

- PO Rivera has been a member of service for six years and has been a subject in two CCRB complaints and two allegations, neither of which was substantiated. § 87(2)(g)
- § 87(2)(b) has been a party to five CCRB complaints and has been named as a victim in four allegations.
  - § 87(2)(b)
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### Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of May 20, 2019, the New York City Office of the Comptroller has no record of a notice of claim regarding this incident (**10 Board Review**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: \_\_\_\_\_

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date